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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,078	05/31/2001	Thomas D. Taggart	STEU-3250	9319

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EXAMINER

TAWFIK, SAMEH

ART UNIT

PAPER NUMBER

3721

DATE MAILED: 05/20/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/871,078

Applicant(s)

TAGGART, THOMAS D. *CD*

Examiner

Sameh H. Tawfik

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 May 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20 and 22-66 is/are pending in the application.
- 4a) Of the above claim(s) 23-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20, 22, 35-44, 48-59 and 63-66 is/are rejected.
- 7) ☒ Claim(s) 45-47 and 60-62 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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### DETAILED ACTION

#### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20, 22, 35, ~~44~~<sup>73</sup>, 48-59, and 63-~~66~~ are rejected under 35 U.S.C. 103(a) as being unpatentable over BOSCH in view of De Stoutz (3,934,042).

BOSCH discloses a method and apparatus for aseptically bottling foodstuffs comprising <sup>the step of</sup> the means for providing a plurality of bottles (Figs. On page 3); aseptically disinfecting the plurality of bottles (page 2, column 1); aseptically filling the aseptically disinfected plurality of bottles with the foodstuffs (page 2, columns 1 and 2); and aseptically disinfected plurality of bottles at a rate greater than 100 bottle per minute (page 2, column 1) <sup>Note that</sup> the machine can be operated to produce 33,600 bottle per hour which is equal to 560 bottles per minute. <sup>Bosch does not disclose this step</sup> BOSCH <sup>wherein</sup> does not disclose aseptically filling the bottles with aseptically sterilized foodstuffs. However, <sup>Neither</sup> Stoutz discloses the step and means for aseptically sterilized foodstuffs (column 1, lines 5-10).

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to have modified BOSCH's method and apparatus for aseptically bottling foodstuffs by having the step and means for aseptically sterilized foodstuffs, as suggested by Stoutz, in order to increase the shelf life or storability of the treated beverage (column 1, lines 22-24)

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Regarding claim 37 and 51: the reference of the prior art discloses the claimed invention except for the plastic is <sup>selected</sup> high density polyethylene. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified COSCH's method for aseptically packaging aseptically sterilized foodstuffs by having plastic with high density polyethylene, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin; supra.*

Regarding claim 39: BOSCH discloses capping the container with aseptically disinfected lid (page 2, column 1).

Regarding claim 40: BOSCH discloses disinfecting the interior of the plurality of containers with a hydrogen peroxide (page 2, column 1).

Regarding claims 41, 43, 52, 53, and 57: BOSCH discloses disinfecting the interior of the plurality of the plurality of container includes the application of the hydrogen peroxide spray and the activation and removal of the hydrogen peroxide using a sterilized air (page 2). BOSCH does not disclose the range of the application of the hot hydrogen peroxide for about 1 second and the removal of the hot hydrogen peroxide using hot air about 24 seconds. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified BOSCH's method for aseptically packaging aseptically sterilized foodstuffs by having range of the application of the hot hydrogen peroxide for about 1 second and the removal of the hot hydrogen peroxide using hot air about 24 seconds, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller, 105 USPQ 233.*

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Regarding claims 42 and 54: BOSCH discloses a feedback control system (page 2, line 3) <sup>column</sup> for maintaining aseptic container conditions.

~~Claim 56 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of B. Poole (2,491,015).~~

Regarding claim 56: BOSCH disclose that disinfecting the container from the outside surfaces (page 2, column 1).

→ B. 63 & 64: OBV.  
Regarding claims <sup>72</sup>63 and <sup>73</sup>64: applicant admitted in the background of the invention that aseptically sterilizing foodstuff (specification; page 2, lines 18-24) "for the aseptic packaging of food products," in order to meet the FDA requirements "the food product must also be processed using an Ultra High Temperature".

103 <sup>Design choice</sup> Regarding claims 65 and 66: Bosch discloses that the bottles are in an upright position during disinfecting, see the Figs.

→ B. 67 & 68: Figs 5 & 6 column 1 OBV.

**Allowable Subject Matter**

~~B. 71~~ <sup>PA 2.5.1.2</sup> Claims 45-47 and 60-62 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Response to Arguments**

Applicant's arguments filed 5/2/2003 have been fully considered but they are not persuasive.

Applicant argue in page in page 7 of the arguments that there is no disclosure nor suggestion of aseptically sterilized foodstuffs in Stoutz's reference. The examiner believes such limitations "foodstuffs" would not make a difference to the apparatus claims, because Stoutz's

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apparatus could work for any type of products. Moreover, the applicant admitted in the background of the invention that aseptically sterilizing foodstuff (specification; page 2, lines 18-24) “for the aseptic packaging of food products,” in order to meet the FDA requirements “the food product must also be processed using an Ultra High Temperature”.

Applicant argue in page 8 of the arguments that the level and type of sterilization in Stoutz’s and the present invention are not synonymous, for nowhere in Stoutz is the term “aseptic”. The examiner believes that Stoutz’s reference discloses sterilizing foodstuffs such as drinks which can be consider as “aseptic” based on the definition of the word “aseptic” which is preventing infection, free or freed from pathogenic microorganisms.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

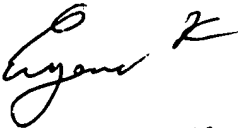
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sameh H. Tawfik whose telephone number is (703) 308-2809. The examiner can normally be reached on Monday - Friday from 8:00 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rada, Rinaldi can be reached on (703) 308-2187. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-7769 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

ST.  
May 15, 2003

  
**EUGENE KIM**  
**PRIMARY EXAMINER**

